

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

**NATIONWIDE MUTUAL INSURANCE
COMPANY**

Plaintiff,

v.

CV 10-PT-1134-E

**SCOTT THOMAS;
KENNETH GENE GOODEN, JR.
and LORI TOUART THOMAS,**

Defendants.

MEMORANDUM OPINION

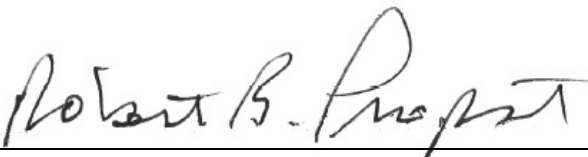
This cause comes on to be heard on plaintiff's Motion for Summary Judgment filed on January 25, 2011. The legal issues with regard to the subject motion include:

(1) Is the failure to later advise the insurer that there is at least a part-time commercial use of an automobile tantamount to a misrepresentation in the earlier application for an insurance policy that there is no such use, if the change creates a material risk which would cause the policy not to be issued on the same terms?

(2) Is there a question of fact as to whether any such change creates such a material risk?

This court is bound by *Bennett v. Mutual of Omaha Ins. Co.*, 976 F.2d 659 (11th Cir. 1992). Also see *Mega Life & Health Ins. Co. v. Pieniozek*, 585 F.3d 1399 (11th Cir. 2009). The motion will be denied. This court does not reach the first issue as such.

This the 18th day of April, 2011.


ROBERT B. PROPST
SENIOR UNITED STATES DISTRICT JUDGE